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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
Equal Access and Interconnection ) CC Dkt. No. 94-54  
Obligations Pertaining to ) RM-8012  
Commercial Mobile Radio Services )

**COMMENTS OF COMCAST CORPORATION**

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### SUMMARY

Comcast Corporation ("Comcast") urges the Commission to establish a monopoly network interconnection policy that ensures full and fair interconnection and creates meaningful opportunities for competition and diversity. Merely adjusting existing cellular interconnection policies for application to emerging service providers will fail to place Commercial Mobile Radio Service ("CMRS") providers in a position to be an effective source of local loop competition.

Comcast urges the Commission to require that all Local Exchange Carrier ("LEC") interconnection agreements, state tariffs and billing and collection agreements be filed with the Commission and be available for inspection. While Comcast has no desire to limit the flexibility of LECs and CMRS providers to forge new and useful arrangements, the Commission and competitors require this information to assess both the availability of services, applicable rates and terms for interconnection and the lack of discrimination in their provision.

Attaining the goal of local competition will require an interconnection policy that encourages the development of a "network of networks" in which customers can access any combination of networks that meets their needs. The pricing of interconnection to LEC monopoly networks is the most critical single issue that must be addressed and resolved before such networking can evolve. Economic theory

demonstrates that a system of fair, cost-based interconnection rates, with mutual compensation between interconnecting carriers, is the only regulatory structure capable of restricting a monopolist's ability to extend its dominance in a single segment of a market to the entire market, thwarting the goal of competing networks.

As noted economist and former Common Carrier Bureau Chief Dr. Gerald W. Brock observes, a mere structural requirement of mutual compensation without scrutiny of actual LEC-CMRS interconnection rates will permit a LEC to extend its monopoly power into evolving competitive markets. A high interconnection rate will have an adverse effect on the development of competition for the foreseeable future, because most CMRS carriers will originate far more traffic than they will terminate for the LEC. This substantial imbalance in traffic will result in a substantial imbalance of payments in favor of the LEC from its competitors. With a net traffic outflow toward the monopolist, the mutual compensation model alone simply does not limit the monopolist's ability to extract profit from its competitor.

The Commission's experience in the international interconnection arena demonstrates that a structural approach to interconnection policy that fails to take account of the market power of the interconnecting carriers and the actual interconnection rate will be unsuccessful in encouraging competition. Comcast urges the Commission to

consider and adopt a "sender keep all" LEC interconnection compensation model with zero cost for terminating service that will approximate the theoretically correct policy of cost based interconnection rates.

\* \* \* \*

Comcast also submits that the extension of burdensome and costly equal access obligations on the balance of cellular carriers not already subject to equal access requirements, regardless of their ability to dominate competition in the wired and wireless market, will in fact undermine the proposed benefits of equal access and will result in a reduction in competition in the wireless and interexchange marketplaces.

No factual predicate for the imposition of equal access obligations on the few remaining non-wireline, independent cellular carriers, such as Comcast, exists. Unlike BOC-affiliated cellular operators, non-wireline cellular carriers have no bottleneck facility from which to leverage competitive advantages. Moreover, all non-wireline carriers currently compete with vertically integrated BOC-affiliated cellular operators in virtually every market and will face increased competition as wireless providers of advanced telecommunications services continue to enter the wireless marketplace.

The Notice's tentative conclusion to impose equal access obligations on independent cellular providers also

ignores imminent wireless competition from Personal Communications Services ("PCS"), Enhanced Specialized Mobile Radio ("ESMR") and other emerging telecommunications service providers. The Commission should not require non-wireline cellular carriers to incur significant costs of equal access without considering the changes that the cellular industry will experience in the coming months and years.

The ramifications of mandating equal access for all cellular operators are both significant and far-reaching. A direct result of imposing equal access obligations on all cellular providers will be a transfer of revenues from non-wireline cellular operators and small IXCs to large facilities-based IXCs including BOCs, who eventually will become IXCs themselves. These revenue shifts will be detrimental to the public interest and particularly damaging to cellular customers as they come at a time when cellular operators are making tremendous reinvestments in their systems to offer greater capacity and new service options.

Moreover, broadly imposing equal access requirements would obliterate significant business opportunities currently enjoyed by smaller IXCs. The fact that non-wireline cellular operators can provide an immediate customer base for smaller IXCs encourages competition in the IXC marketplace and results in more diverse IXC participation in markets that might otherwise be dominated by AT&T, MCI and Sprint.

The Commission's tentative conclusion that imposing equal access obligations on independent cellular carriers is in the public interest is based on a mistaken balancing of costs and benefits associated with equal access. A close examination of the effects of imposing equal access burdens on all cellular providers confirms that the public interest would best be served by deferring a determination on the issue until the wireless marketplace is sufficiently developed.

Imposing equal access on independent cellular carriers, at this time will: (1) deny smaller IXCs the opportunity to contract with particular cellular companies to offer innovative services to a cellular operator's customer base; (2) relegate non-wireline cellular carriers to the sidelines as the Commission adopts rules that permit facilities-based interexchange carriers to create and manage a "network of networks"; (3) violate Congress' intent to ensure that similar services are subject to similar regulation; and (4) require cellular operators to undertake significant and costly reconfigurations of their software and switching mechanisms for what may only be a short period of mandated equal access.

While the Commission's efforts to create customer choice is commendable, it must first acknowledge that customer choice exists in virtually every market, and second that the most rewarding focus of Commission resources to

encourage choice would be to encourage competition. In order to provide for the possibility of local competition, the Commission should not burden relatively smaller, independent cellular carriers with counter-productive IXC equal access obligations that may shortly sunset, but should fashion LEC interconnection rules that actually permit a CMRS provider to compete for local loop customers.

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION . . . . .	1
II. THE COMMISSION MUST EMBARK IN A NEW DIRECTION IN LEC-CMRS INTERCONNECTION . . . . .	2
A. LEC-Cellular Interconnection Policies, Even With the Proposed Improvements, Fail to Address Fundamental Competitive Issues . . . .	2
B. There Is No Single Correct Interconnection Compensation Model for Every Market . . . . .	9
C. A Mutual Compensation Scheme Inappropriately Ignores the Relevance of Market Power and the Level of Interconnection Rates . . . . .	14
D. Implications for LEC-CMRS Interconnection Policies . . . . .	15
III. MUTUAL INTERCONNECTION OF CMRS NETWORKS WILL OCCUR WITHOUT COMMISSION INTERVENTION . . . . .	16
A. Specific CMRS Interconnection Rules Would Be Premature . . . . .	16
B. A CMRS Interconnection Obligation for "Switch-based" CMRS Resellers Is Not In The Public Interest. . . . .	17
IV. THE PUBLIC INTEREST WILL NOT BE SERVED BY IMPOSING MODIFIED FINAL JUDGMENT EQUAL ACCESS OBLIGATIONS ON ALL CELLULAR PROVIDERS. . . . .	19
A. The Factual Predicate That Supported The Imposition Of Equal Access Obligations On the BOCs And BOC-Affiliated Cellular Carriers Cannot Support Application Of The Requirements To Independent Non-Wireline Cellular Operators. . . . .	21
B. An Analysis Of The Cellular Marketplace Indicates That The Imposition Of Equal Access Obligations On The Remaining Cellular Carriers Will Be Detrimental To The Public Interest. . . . .	24



C.	By Imposing Equal Access Obligations On All Cellular Providers, The Commission Encourages The Transfer Of Revenues From Predominately Small Non-Wireline Cellular Operators To Large Facilities-Based IXCs, And From Small IXCs To Large IXCs. . . . .	28
D.	The Costs Of Imposing Equal Access Obligations On Non-wireline Cellular Providers Far Outweigh The Benefits Achieved. . . . .	33
V.	CONCLUSION . . . . .	40
ATTACHMENT:	Interconnection and Mutual Compensation with Partial Competition - Dr. Gerald W. Brock	

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**COMMENTS OF COMCAST CORPORATION**

Comcast Corporation ("Comcast") hereby submits its comments in the above-captioned proceeding.<sup>1/</sup> Comcast subsidiaries operate as non-wireline cellular service providers in the Philadelphia, New Jersey, Delaware and Illinois markets.

**I. INTRODUCTION**

The Commission has requested comment on a variety of issues that will affect the future of telecommunications competition in wired and wireless markets. The single most effective policy the Commission could adopt in this proceeding would be an interconnection policy that ensures full and fair interconnection to the local exchange network ("LEC"), thereby ensuring the opportunity to provide services competitive with the landline network.

It is essential that the Commission design interconnection structures to encourage competition and

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<sup>1/</sup> Notice of Proposed Rule Making and Notice of Inquiry, Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, FCC Docket No. 94-54, FCC-94-145 (adopted June 9, 1994, released July 1, 1994) (hereafter "Notice").

diversity. Merely tinkering with existing cellular interconnection policies will deny Commercial Mobile Radio Service ("CMRS") providers the opportunity to be an effective source of local competition, a basic goal of this Commission and of Comcast.

The Notice also recommends applying uniform "access" rules to those few cellular service providers not already subject to equal access obligations, regardless of their market power. Uniform rules can only be justified if the additional carriers on which they are imposed and the market conditions they face are similar. The failure to consider, in the case of independent non-wireline carriers, the absence of an affiliated local telecommunications monopoly bottleneck or ownership by AT&T undermines the tentative conclusion that uniform imposition of equal access is in the public interest.

## **II. THE COMMISSION MUST EMBARK IN A NEW DIRECTION IN LEC-CMRS INTERCONNECTION**

### **A. LEC-Cellular Interconnection Policies, Even With the Proposed Improvements, Fail to Address Fundamental Competitive Issues**

The Notice invited a reassessment of the effectiveness of previous interconnection policies, particularly as they affect the ability of new entrants to develop into LEC competitors. While the Commission is to be commended for its willingness to consider new policy positions to encourage facilities based competition, the Commission

cannot expect that a policy without adequate regulatory incentives and enforcement mechanisms will achieve its stated goals.<sup>2/</sup>

For example, while the Commission's determination to reinvigorate the moribund mutual compensation is a positive step in building a more even distribution of rights and responsibilities among carriers, there are severe limitations on the policy's effectiveness in the absence of Commission involvement ensuring fair, cost-based LEC interconnection rates.

Comcast has retained economist, telecommunications policy author, professor and former Common Carrier Bureau Chief Dr. Gerald W. Brock to assess the Commission's experience with access and interconnection charges and their effectiveness in addressing monopoly market power and their effect on potentially competitive markets. As discussed below, Dr. Brock's conclusions demonstrate that mere tariff or other filing requirements, even coupled with a mutual compensation scheme, will not prevent LECs from continuing to use their monopoly power over interconnection to severely disadvantage or to halt the development of competition altogether in adjacent wireless markets. Only by setting particular compensation policies, such as a "sender keep

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<sup>2/</sup> In Comcast's CMRS Comments, for example, Comcast suggested that the CMRS licenses of LEC affiliates specifically be conditioned upon their adherence to the Commission's established interconnection policies.

all" with zero based rates, will the Commission begin to address the incentive and ability of the monopoly LEC to set interconnection rates so high as to inhibit or preclude competition.

The Commission's interconnection policy in cellular has been to promote non-discriminatory interconnection arrangements by requiring the LECs to furnish interconnection to cellular systems upon terms "no less favorable than those offered to the cellular systems of affiliated entities or independent telephone companies."<sup>3/</sup> The Notice concedes that the period following early cellular licensing was marked by "difficult negotiations," and that the Commission was petitioned repeatedly to intervene, prompting the issuance of Commission policy statements to ensure that LECs would treat cellular competitors fairly in negotiating interconnection arrangements.<sup>4/</sup>

The Commission determined that it had plenary jurisdiction over the physical plant used for interconnection, and preempted state regulatory commissions

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<sup>3/</sup> See Notice at ¶ 102, citing Report and Order, 86 FCC 2d 469, 496 (1981).

<sup>4/</sup> See Memorandum Opinion and Order, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 RR 2d (P&F) 1275 (1986); Declaratory Ruling, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 FCC Rcd 2910 (1987); Memorandum Opinion and Order on Reconsideration, The Need to Promote Competition and Efficient Use of Spectrum for Radio Carrier Services (Cellular Interconnection Proceeding), 4 FCC Rcd 2369 (1989).

from regulation of physical interconnections provided to cellular operators. The Commission declined to preempt the intrastate portion of LEC interconnection rate regulation, reserving its option to revisit that decision should circumstances warrant.<sup>5/</sup> Additionally, the Commission ruled that LECs had an obligation to negotiate cellular interconnection arrangements in good faith and treat cellular operators as co-carriers in the local exchange, including the payment of reciprocal termination charges.<sup>6/</sup>

In the CMRS Regulatory Parity proceeding, the Commission imposed on LECs the same good faith interconnection negotiation requirements on the interconnection of private mobile radio services. The Commission also reiterated the longstanding but largely ignored policy requiring LECs to compensate CMRS providers for their reasonable costs of terminating traffic that originates on LEC networks.<sup>7/</sup> The Parity Order also provided that interstate charges by the LEC for interconnection must be reasonable and that any form of interconnection made available to others must be made

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5/ See Declaratory Ruling at 2911-12.

6/ See Memorandum Opinion and Order on Reconsideration, 4 FCC Rcd 2369, 2373 ("cellular carriers and telephone companies are equally entitled to just and reasonable compensation for their provision of interstate access, whether through tariff or by a division of revenues").

7/ See Second Report and Order, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1497-98 (1994) ("Parity Order").

available to CMRS providers unless it is economically or technically infeasible.<sup>8/</sup>

Comcast demonstrated in the Regulatory Parity proceeding that the ground rules for LEC-CMRS interconnection should not be based on a rehash of existing cellular obligations but instead should be designed to support the Commission's overall policies to promote competition between and among wireless and landline services. Comcast urged the filing of LEC intrastate interconnection contracts and all related contracts for services such as billing and collection to ensure that the Commission had a full knowledge of the terms, rates and conditions imposed on LEC wireless competitors.<sup>9/</sup> Comcast

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8/ See Parity Order at 1498 ("[I]n determining the type of interconnection that is reasonable for a commercial mobile radio service system, the LEC shall not have authority to deny to a CMRS provider any form of interconnection arrangement that the LEC makes available to any other carrier or other customer, unless the LEC meets its burden of demonstrating that the provision of such interconnection arrangement to the requesting commercial mobile radio service provider either is not technically feasible or is not economically reasonable").

9/ See Comments of Comcast Corporation, GN Dkt. No. 93-252 at 11-12, filed November 8, 1993. In addition, Comcast enunciated several basic principles of LEC-CMRS interconnection policy:

1. LEC PSTN networks must be unbundled and the rates for each element must be just and reasonable and reflect the direct costs of providing the function;
2. CMS provided by a LEC affiliate must be provided through a subsidiary separate from the landline LEC and effective non-discrimination requirements  
(continued...)

showed that only with access to this information could the Commission and competitors assess whether interconnection arrangements were frustrating federal policy. Relying in part on these concerns, the current Notice requests comment on a single issue -- whether the Commission should re-enforce its current good faith negotiation requirement with a requirement that LECs tariff their CMRS interconnection arrangements. It is Comcast's sincere hope that the Commission will not be so shortsighted as to refuse to address the other basic requirements Comcast articulated, either in this proceeding or in other future proceedings.

The Notice observes that Pacific Bell, US West and GTE all expressed satisfaction with the current "flexible" interconnection negotiation requirement in the Regulatory Parity proceeding and opposed any new interconnection tariff

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9/ (...continued)  
must be formulated;

3. LECs must provide uniform advance notification of changes to the LEC network and solicit participation in decisions that affect interconnection and new service functions;
4. There must be no restriction on resale or reuse of LEC tariffed or contract services provided to all CMS providers; and
5. To ensure that LEC-affiliated CMS providers cannot capitalize on their relationships with the local bottleneck, LEC affiliates should be required to charge separately their end users an amount not less than the full cost of the basic service components for such services to non-affiliates.

Comcast Comments at 9.



filing requirement. Moreover, the Notice states that CTIA and McCaw believe, with reservations, that the current negotiation process has worked to eliminate major controversies without the need for public filings or regulatory oversight.<sup>10/</sup> Citing these sources, the Notice tentatively concludes that there are unlikely to be future CMRS interconnection disputes that cannot be resolved within the existing policy framework.

In Comcast's view, it is not essential that relevant LEC intrastate and interstate service arrangements be tariffed with the Commission. It is critical, however, that these agreements, state tariffs and billing and collection arrangements be filed and available for inspection, and that the standard be one which promotes competition. The Commission and competitors require information to assess both the availability of services and the lack of discrimination in their provision. It is entirely predictable that LECs and LEC-dominated cellular trade associations would not find any serious fault with the current negotiation requirement, as it permits the LECs unparalleled ability to impose costs on their competitors with minimal regulatory oversight.

Moreover, the Commission should not be lulled into a false sense of complacency that the difficult issues in cellular interconnection are past. If CMRS is to become an

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<sup>10/</sup> See Notice at ¶¶ 111 and 112.

alternative to LEC landline services, something more than general policy statements, informational filing requirements or structural rules addressing mutuality of compensation will be required.

Finally, in light of the patently unreasonable rates the LECs filed in their Expanded Interconnection tariffs, Comcast opposes MCI's suggestion raised in the Notice that an interconnection tariffing requirement be subsumed into the Commission's collocation tariffing framework. Despite the Commission's efforts to use collocation to advance competitive access competition to LECs, the LECs have abused the Commission's tariffing and investigation process to prevent the development of cost-based, unbundled rates for expanded interconnection. Extension of the expanded interconnection tariffs to CMRS interconnection would not advance CMRS competition.

**B. There Is No Single Correct Interconnection Compensation Model for Every Market**

As discussed in the Brock Paper, telecommunications interconnection has played an historically crucial role in determining competitive viability and pricing policy. Major disputes about inter-carrier and customer interconnection rights and obligations have yielded several basic models of interconnection that are possible models for adoption in the LEC-CMRS interconnection framework. Local competition will require an interconnection policy that allows the

development of a "network of networks" in which customers have access to any combination of networks that meet their needs. While no single model today completely meets this need, review of existing models demonstrates the variety of potential interconnection models available.

The Customer Premises Equipment ("CPE") model addressed the problem of interconnection across a defined network boundary by imposing a zero rate interconnection charge. Under the 1980 Computer II decision, CPE was deregulated and the support flows it traditionally provided to the LEC monopoly networks were eliminated.<sup>11/</sup> Customers gained the right to interconnect any amount of CPE without paying a specific interconnection charge. The policy decision to "carve off" CPE from the monopoly network permitted CPE to become a competitive market segment. Without a zero cost interconnection requirement, LECs would have been able to continue to monopolize CPE.

In the interexchange access model, the Commission decided not to eliminate the established system of subsidy revenue flows from long distance to local service. The system of terminating and originating access charges, together with the MFJ restrictions on BOC participation in the interexchange market allowed interexchange competition to develop. In both the CPE and access charge

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<sup>11/</sup> See Final Decision, Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980).

interconnection models, the Commission's policy concern has been that the interconnector receive access to the monopolized market at an appropriate price.

In contrast, the mutual compensation model which the Commission proffers most closely resembles the international model of interconnection, which assumes that each interconnecting carrier has market power. The international interconnection/compensation system utilizes an accounting rate in which the level of payment is negotiated by the carrier pairs and whatever level is chosen is generally paid regardless of the direction of the traffic.

Unlike CPE or access charge models, the international compensation system is not designed to protect against abuse of monopoly power or to provide one party a subsidy, but rather is based on the goal of providing compensation for mutually beneficial interconnection for a joint service. The mutuality of benefit and compensation makes the international model at least a superficially appealing framework for network-to-network interconnections. A problem arises, however, in translating the international mutual compensation scheme to a market structure in which carriers exercise different levels of market power or exchange different traffic loads.

As the Brock Paper observes, so long as there were bilateral monopolies, carriers could bargain over the international compensation scheme on an equal basis. Once

competition was introduced in the U.S. for international call termination, however, foreign carriers could choose to send traffic to whichever domestic carriers offered the foreign carrier the most favorable terms. The Commission understandably regarded this aspect of the international system with some alarm, as competition appeared to be benefitting foreign carriers and not U.S. customers.<sup>12/</sup>

So long as traffic is balanced, the actual mutual compensation rate is nearly irrelevant because under a net payment system it cancels out. However, if as typically happens, the competitor or new entrant originates more traffic than it terminates, a high compensation rate favors the monopolist. Commission analysts concluded that with a net traffic outflow toward the monopolist, the mutual compensation model does not limit the monopolist's ability

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<sup>12/</sup> As the Brock Paper notes, a 1984 Office of Plans and Policy Working Paper concluded:

This paper raises serious questions about the wisdom of deregulating U.S. international telecommunications without considering whether this will increase the market power of foreign telecommunications authorities. Increased competition among U.S. suppliers of international telecommunications services is likely to result in a reduction in the U.S.'s share of the benefits from such services unless the U.S. government takes appropriate countermeasures.

Evan Kwerel, "Promoting Competition Piecemeal in International Telecommunications", OPP Working Paper 13 (December 1984) at 49.

to extract profit from its interconnecting competitor.<sup>13/</sup> Comcast's own experience confirms that it originates three to five times more traffic for termination over Bell Atlantic's monopoly landline than traffic it terminates from Bell Atlantic.

Initially the Commission attempted to address the high levels of U.S. outpayments by insisting that compensation rates be equal in both directions. The Commission has since recognized, however, that the actual level of rates must also be controlled to allow competition to work.<sup>14/</sup> The Commission's current policy is to seek reduction of international compensation rates toward costs to promote effective international competition.

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<sup>13/</sup> As the OPP Paper observed:

When the net traffic flow is out of the U.S., as with international MTS, . . . U.S. carriers are making net payments to the PTT. The PTT can extract the same total revenue from U.S. carriers regardless of the terms for dividing the accounting rate by demanding a sufficiently high accounting rate. OPP Paper at 26.

<sup>14/</sup> See International Accounting Orders, Report and Order, 6 FCC Rcd 3552, 3556 (1991); First Report and Order, 7 FCC Rcd 559, 563 (1991) and Second Report and Order and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 8040, 8041 (1992).

**C. A Mutual Compensation Scheme Inappropriately Ignores the Relevance of Market Power and the Level of Interconnection Rates**

The Commission's experience in the international interconnection arena demonstrates that a structural approach to interconnection requirements that fails to take account of the market power of the interconnecting carriers and the actual interconnection rate will be unsuccessful in encouraging competition. A mere structural requirement of mutual compensation without scrutiny of actual LEC-CMRS interconnection rates is doomed to failure, particularly if the goal, as in the CPE and access charge cases, is to foster competitive markets.

Dr. Brock examined the economic characteristics of a mutual compensation scheme for monopoly LEC to CMRS interconnection and concluded:

- (1) If there are no regulatory controls on compensation for interconnection, the monopolist of part of the market can extend its monopoly power to the entire market;
- (2) A mutual compensation policy without limits on the level of rates does not limit market power;
- (3) The level of rates under a mutual compensation policy is unimportant if and only if the level of incoming and outgoing traffic is exactly balanced. Because traffic levels will rarely, if ever, be exactly balanced, the level of rates will be an important factor in the viability of competition;
- (4) A mutual compensation policy with prices limited to the cost of service is the theoretically correct compensation policy. Mutual compensation with prices limited to the cost of service prevents the monopolist of part of the market from extending its market power to potentially competitive sectors of the market.

- (5) Capacity charges rather than per minutes charges allow attention to be focused on the cost of service at the peak load which is generally the real cost of service;
- (6) "Sender keep all" is an administratively simple mutual compensation scheme with zero prices for terminating service. It is an attractive approximation to the theoretically correct policy of cost based prices when the incremental cost of terminating service is low.

Brock Paper at 1.

**D. Implications for LEC-CMRS Interconnection Policies**

Similar to the Commission's non-cost based rate dilemma in the international market, LEC-CMRS interconnection problems cannot be solved simply by imposing a mutual compensation structure. The rate charged will have an effect on competition, because, at least for the foreseeable future, most CMRS carriers will originate far more traffic than they will terminate for the LEC. This substantial imbalance in traffic will result in a substantial imbalance of payments to the LEC.

Much like the monopoly foreign carriers, LECs possess the incentive and ability to extract high, non-cost based rates for termination of CMRS traffic. Indeed, LECs may be quite willing to pay high interconnection charges for traffic terminated to CMRS providers if the overall payment structure acts as a barrier to competitive local loop entry to new CMRS and non-wireline cellular providers.

A requirement that LEC CMRS affiliates pay the same high interconnection rate as other CMRS providers is of no



particular consequence to the LEC because the cost is a pocket-to-pocket transfer. Such a requirement in fact assists the LEC to perpetuate its market dominance because it can first negotiate the compensation rate with its CMRS affiliate. The LEC then can apply this "non-discriminatory" rate to all other CMRS providers and ensure that no competitor can emerge to challenge its monopoly. In fact, as the Brock Paper observes, a LEC with a wireless affiliate can maximize the total profits of its enterprise by setting a high mutual compensation rate that is neutral to the LEC but disadvantages its unaffiliated competitor.<sup>15/</sup>

### **III. MUTUAL INTERCONNECTION OF CMRS NETWORKS WILL OCCUR WITHOUT COMMISSION INTERVENTION**

#### **A. Specific CMRS Interconnection Rules Would Be Premature**

Another aspect of the Commission's Notice is an inquiry into the need for rules and policies delineating CMRS-to-CMRS interconnection. The Commission's apparent policy concern is that future networks be fully and directly interconnected. Comcast submits that it is far too early in the development of competitive networks to force a policy of direct interconnection on non-monopoly competitors. The initial and critical interconnection for CMRS, of course, is technical and economic terms of interconnection to the LEC

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<sup>15/</sup> See Brock Paper at 17. Comcast also notes that in this situation LECs operating pursuant to price caps with incentive regulation will have no obligation to disgorge this monopoly interconnection profit.